

procedures are explained in section II.D of this preamble.

B. Medicaid Provisions

Section 1902 of the Act sets forth State plan requirements for medical assistance that must be submitted to the Secretary for approval. Section 4751 of OBRA '90 amended section 1902 of the Act relating to requirements for State plans by adding provisions concerning advance directives similar to the Medicare provisions in section 4206 of OBRA '90. Specifically, section 4751 of OBRA '90 amended section 1902 of the Act by adding new paragraph (57) to subsection (a) and a new subsection (w). Section 1902(a)(57) of the Act mandates, as a State Medicaid plan requirement, compliance with section 1902(w), which requires all hospitals, nursing facilities, providers of home health care and personal care services, hospices, or health maintenance organizations (as defined in section 1903(m)(1)(A) of the Act) that are receiving funds under a State plan to maintain written policies and procedures to inform, educate, and distribute written information on advance directives to all adult individuals receiving medical care by or through the provider or organization, in the manner described in the law.

Section 4751(a) also amended section 1902 of the Act by adding a new paragraph (58) to subsection (a) to require that States, acting through a State agency, association, or other private non-profit entity, develop a written description of the State law concerning advance directives for distribution to Medicaid providers and coordinated care plans.

Section 4751(b) made conforming amendments to sections 1903(m)(1)(A) and 1919(c)(2) of the Act. These requirements are to be enforced under applicable State plan provisions.

C. Public Education Requirements

Section 4751(d) of OBRA '90 requires the Secretary to conduct a public education campaign on advance directives. HCFA, primarily through our Office of Beneficiary Services, has worked in concert with State and local agencies and consumer groups to carry out this requirement. Examples of public awareness activities include:

- *Information Kit and Press Package.* An information kit was forwarded to major beneficiary organizations and the national news media. We also have issued a press package that includes a bibliography of related publications, as well as a list of organizations that have addressed the statutory requirements concerning advance directives.

- *Medicare Hotline:* 1-800-638-6833. Information concerning advance directives is available through the Medicare hotline. Staff members provide basic information from the information kit, answer questions, and forward booklets concerning advance directives upon request.

- *Articles.* A kit containing standard articles concerning advance directives was sent to all suburban daily and weekly papers. This material generated 244 articles in 25 States with a readership of an estimated 4 million persons. We also sent materials to national and local broadcast organizations, including articles and scripts and/or slides for radio and television public service announcements. The radio material is known to have been used on 258 radio stations that cumulatively reach 4.8 million homes servicing 15 million listeners. The TV material is known to have appeared on 32 stations in 23 States, cumulatively reaching 37.3 million homes.

- *Other Publications.* The following is a brief list of other publications concerning advance directives:

- * *Medicare Handbook.* The Medicare Handbook now includes information regarding advance directives. We routinely send this publication, available in both English and Spanish, to each new Medicare enrollee (about 200,000 individuals per month) and more than 1 million other copies have been distributed to current beneficiaries through HCFA publication distribution channels.

- * *Medicare and Advance Directives Leaflet.* Approximately 500,000 copies of this leaflet have been distributed to hospitals, beneficiary groups, agencies on aging and similar offices, as well as to some supermarkets with a high concentration of elderly clients.

- * *Cartoon Booklet.* HCFA has distributed approximately 10,000 copies of an easy-to-read cartoon booklet on advance directives that is designed for audiences with low literacy levels.

In addition to these activities, we are continuing to plan and carry out further initiatives related to our public service responsibilities that are designed to further educate the public concerning advance directives.

We note that the Office of the Inspector General (OIG) conducted an early implementation study in December, 1992, to determine compliance with the advance directive provision and facility and patient responses (OEI-06-91-01130 and OEI-06-91-01131). This study found that at that time, two-thirds of the patients in the facilities studied had some

understanding of advance directives. We believe that this finding indicates that HCFA, in concert with other members of the health care industry, has made significant strides towards educating the public on advance directives.

D. Enforcement Procedures

For hospitals and hospices, compliance with the advance directives requirements is considered part of the provider agreement with HCFA. The provider agreement obligates a provider to comply with the applicable requirements of title XVIII of the Act and includes some specific provisions, such as the advance directives requirements. The Secretary may refuse to enter into a provider agreement or may refuse to renew or may terminate an agreement after the Secretary: (1) Determines that the provider fails to comply substantially with the provisions of the agreement or with the provisions of title XVIII and the implementing regulations; (2) determines that the provider fails substantially to meet the applicable provisions of section 1861 of the Act (definition of services, institutions, etc.); or (3) has excluded the provider from participation under sections 1128 or 1128A of the Act (exclusion and civil monetary penalty provisions).

On-site surveys of providers are performed by State agency or Federal surveyors to determine compliance with the advance directive requirements or the conditions of participation. However, providers are assumed to be in compliance with the general requirements of the provider agreement as set forth in title XVIII. HCFA does not routinely seek information to confirm that the provider is complying with specific requirements of the provider agreement. If information concerning a provider's compliance with the agreement of the provisions of title XVIII is needed, it may be obtained in several ways, including the performance of an on-site survey.

Each hospital and hospice provider has been informed of its obligation to comply with the advance directive provisions and that these provisions are required as a part of its provider agreement with HCFA. Compliance with these provisions is necessary for continued participation in the Medicare and Medicaid programs. These providers were required to inform HCFA, in writing, of the date they achieve compliance.

Our regional offices recently completed random surveys to determine the percentage of providers who have complied with the advance directive